

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

May 30, 1984

William H. Brown
Attorney at Law
17705-I Hale Avenue
Morgan Hill, CA 95037

Re: Advice Letter No. A-84-131

Dear Mr. Brown:

Thank you for your request for advice on the conflict of interest provisions of the Political Reform Act.

FACTS

You are a member of the Morgan Hill City Council and an attorney. The City of Morgan Hill has a rent control ordinance for mobile home parks. If, during a 12-month period, a park owner increases the rent charged for a space by an aggregate of 75% of the increase in the Consumer Price Index, the tenant can request arbitration on whether the increase is reasonable. The determination of "reasonableness" is made by an arbitrator based upon statutorily prescribed standards.

The City has an Advisory Commission on Rents which was appointed by the City Council.^{1/} In the case of a rent dispute, a tenant petitions for arbitration, the Commission prepares a list of proposed arbitrators and the park owner and tenant choose one to hear the case. If the parties do not agree on an arbitrator, the Commission appoints one from the names appearing on the list. At the hearing, the parties appear and present evidence on the issue of the reasonableness of the rent increase. The arbitrator's decision may be appealed to the City Council. In all cases, the arbitrator is paid by the park owner.

^{1/} The Commission members are not paid.

In the past, you have represented park owners at arbitration hearings. However, you have abstained from participating in any City Council actions regarding the rent control ordinance or the appointment of any of the members of the Advisory Commission on Rents. Recently you began representing park owners at an arbitration hearing and your participation in the hearing was challenged because of your position on the City Council.

QUESTIONS PRESENTED

1. May you represent your clients, the mobile home park owners, by appearing at the arbitration hearing?
2. If you cannot appear at the hearing, may your legal associate, who has independently prepared for the hearing, appear?

CONCLUSION

1. The Political Reform Act will not prevent you from representing your clients at the arbitration hearing, however, you must disqualify yourself if the arbitrator's decision is appealed to the City Council.
2. If an arbitration decision is appealed to the City Council and you are disqualified from the decision, you may not represent your client on the appeal. However, the Political Reform Act does not prevent your associate from representing the client before the Council.

DISCUSSION

Government Code Section 87100^{2/} prohibits a public official from making, participating in the making, or in any way attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a "financial interest" in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect on:

^{2/} Hereinafter all statutory references are to the Government Code unless otherwise stated.

* * *

(c) Any source of income . . . aggregating two hundred fifty dollars (\$250) or more in value provided to . . . the public official within 12 months prior to the time when the decision is made.

(Section 87103.)

A. Appearance Before the Arbitrator

If the clients you are representing before the arbitrator are sources of income to you of \$250 or more, and if the arbitration decision will foreseeable have a material financial effect on your clients, you may not make, participate in the making, or use your official position to influence the arbitration decision. Under the definitions provided in 2 Cal. Adm. Code Section 18700,^{3/} your appearance at the hearing will not constitute "making" or "participating" in the decision. In addition, you will not be "using your official position to influence the decision." This phrase is defined to include furthering or attempting to affect in any manner any decision:

(1) Within or before ... [your] agency; or

(2) Before any agency which is appointed by or subject to the budgetary control of ... [your] agency.

(2 Cal. Adm. Code Section
18700(e).)

The decision concerning the rent increase is before an arbitrator who is neither subject to the City Council's appointive, nor budgetary, powers.

B. Appeal Before City Council

If the arbitrator's decision is appealed to the City Council, you must disqualify yourself from the Council's review of the decision.^{4/} This includes abstaining from appearing

^{3/} A copy of 2 Cal. Adm. Code Section 18700 is enclosed.

^{4/} This assumes that your client is a source of income to you of \$250 or more and that the decision will foreseeably have a material financial effect on the client.

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before the Council to represent your clients. Although, the Act will allow your legal associate to represent your clients before the Council, you should check to see that this action will not violate other provisions outside of the Act. (See for example 64 Ops. Cal. Atty. Gen. 282 (April 9, 1981), copy enclosed.)

If you have any additional questions, please feel free to contact me at (916) 322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel
Legal Division

JSM:plh
Enclosure

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WILLIAM H. BROWN

ATTORNEY AT LAW

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May 16, 1984

California Fair Political Practices Commission
1100 "K" Street Building
Sacramento, CA 95814

Attention of Ms. Barbara Milman

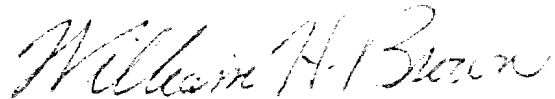
Re: Request for Advice

Dear Ms. Milman:

I am a City Councilman for the City of Morgan Hill and a practicing attorney. I request a ruling on the issue presented in the memo attached.

As an arbitration hearing is scheduled within fifteen (15) days, a prompt response would be appreciated. If you have any questions, please contact me.

Yours truly,



William H. Brown

cc: Mr. Mark Hynes, City Attorney

MEMORANDUM

DATE: May 16, 1984

TO: Ms. Barbara Milman, Legal Division
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
1100 "K" Street Building
Sacramento, CA 95814

FROM: William H. Brown
Attorney at Law
17705-I Hale Avenue
Morgan Hill, CA 95037
(408) 779-3232

RE: Request for Advice Letter

Issues Presented:

Does the appearance by an attorney retained by a mobilehome park owner at an arbitration hearing conducted under a city's rent control ordinance constitute "attempt(ing) to use his official position to influence a government decision..." [Government Code §87100] where the attorney is also a City Councilman?

If the answer to the foregoing is in the affirmative, is the appearance by the same attorney's associate who has made independent preparation for the hearing also barred?

Statement of Facts:

On March 16, 1983, the City of Morgan Hill enacted a rent control ordinance [Ordinance 606-A, New Series] affecting mobile home parks. Increases in space rent which exceed an aggregate of 75% of the increase in CPI for the relevant 12-month period subject park owners to action by tenants for arbitration of whether a proposed increase is reasonable. The determination of such "reasonableness" is made independently by an arbitrator based upon statutorily prescribed standards.

The ordinance provides that upon petition for review by tenants, a list of proposed "Hearing Officers" is prepared by the City's Advisory Commission on Rents and sent to claimant and respondent for their selection of an arbitrator from among those listed. If within 5 days of receipt of the list, the parties fail to mutually agree on the selection of one of the arbitrators listed or if they cannot agree upon some other person not listed, then by default the Commission appoints an arbitrator from among those nominated in the list.

The Advisory Commission appointed by the City Council is a group of nonpaid residents of the City whose function is to recommend amendments to the ordinance and assist in the implementation of the arbitration process.

Regardless of which party initiates the arbitration proceedings, the arbitrator's fee is paid by the park owner. The parties appear at the scheduled hearing and present their evidence for and against the reasonableness of the proposed rent increase. The arbitrator's decision may be appealed to the City Council.

William H. Brown, an attorney and member of the Morgan Hill City Council, represents park owners in the City and has in the past personally appeared at arbitration proceedings before a neutral arbitrator to argue his client's case. He has abstained from participating in any City Council actions regarding the rent control ordinance as well as the appointment of any Commission members.

An arbitration is currently in process in which Mr. Brown has been representing mobile home park owners. A challenge to his participation has been raised. The next scheduled hearing is to take place on June 1 or June 6. A prompt response to this request for ruling is therefore imperative.
